

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

TERRY L. LEADON, JR.,

Plaintiff,

v.

BRYAN COLLIER, et al.,

Defendants.

§
§
§
§
§
§
§
§
§
§
§

Case No. 6:19-cv-364-JDK-KNM

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Terry L. Leadon, Jr., proceeding pro se, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge K. Nicole Mitchell for findings of fact, conclusions of law, and recommendations for disposition.

Before the Court are a motion for summary judgment by Defendants William Bradley, Johnda Wallace, and Fawas Lambo (Docket No. 50)¹ and a motion for summary judgment by Defendant Gideon Oputy (Docket No. 53). Both motions seek summary judgment based on Plaintiff's failure to exhaust administrative remedies before filing suit. On May 24, 2021, Judge Mitchell issued a Report recommending that the Court grant both summary judgment motions and dismiss Plaintiff's claims against Defendants Bradley, Wallace, and Oputy without prejudice for failure to

¹ As Judge Mitchell's Report and Recommendation explains, while Defendants Bradley, Lambo, and Wallace all joined this motion for summary judgment, the motion argues for dismissal only for Defendants Bradley and Wallace. Docket No. 54 at 2.

exhaust administrative remedies. Docket No. 54. Further, the Report recommended dismissing Plaintiff's claims against Defendant Lambo as to the February 11, 2019 incident. No objections to this Report have been filed.

This Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

Here, no objections were filed in the prescribed period. The Court therefore reviews the Magistrate Judge's findings for clear error or abuse of discretion and reviews the legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law").

Having reviewed the Magistrate Judge's Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 54) as the findings of this Court.


The Court **GRANTS** Defendants Bradley, Wallace, and Lambo's motion for summary judgment (Docket No. 50) and **GRANTS** Defendant Oputy's motion for

summary judgment (Docket No. 53). Plaintiff's claims against Defendants Bradley, Wallace, and Oputy are **DISMISSED** without prejudice for failure to exhaust administrative remedies. Further, for the reasons explained in the Report and Recommendation, Plaintiff's claims against Defendant Lambo concerning the February 11, 2019 incident are **DISMISSED** without prejudice for failure to exhaust administrative remedies. Docket No. 54 at 7, 8.

It is further **ORDERED** that Defendants Bradley, Wallace, and Oputy are **DISMISSED** as parties to the lawsuit. The dismissal of these claims and parties shall have no effect on Plaintiff's claim against Defendant Lambo for the March 10, 2019 incident, which is the only claim remaining in the case.

It is further **ORDERED** that in accordance with the Court's scheduling order, any motion for summary judgment by Defendant Lambo on issues other than exhaustion of administrative remedies are due within thirty days of the entry of this order. Should Defendant Lambo believe that disputed issues of fact exist which preclude summary judgment, he shall so advise the Court within this thirty-day period.

So **ORDERED** and **SIGNED** this 27th day of **July, 2021**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE